IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 6748 of 2001

Date of decision: March 16, 2007.

**Subhash Chander Gupta**

**.....Petitioner**

Vs.

**State of Haryana and others**

**....Respondents.**

Present: Mr.V.B.Aggarwal, Advocate for the petitioner.

Mr.Jitendra Chauhan, Addl. Advocate General, Haryana
for respondent- State.

JUDGMENT

**M.M.Aggarwal, J.**

Petitioner, who had been working as Junior Engineer in the Department of P.W.D, B& R at Kurukshetra since 2.4.1971, went on deputation in May 1986 to the Haryana Tourism Corporation. There had been theft of the materials for which FIR had been lodged, which went un-traced. Departmental enquiry was started separately. Petitioner was charge-sheeted.

Charges were as under:

> " That he kept the material so purchased in his own custody instead of keeping the same in the official store and arranging a proper watch and ward and caused loss of Rs.30831.98."

He submitted reply. Enquiry Officer was appointed but enquiry officer reported that charges were not proved. However, Engineer-in-Chief PWD, B&R did not agree with the enquiry report and had recorded dis-agreement note and show cause notice was issued to the petitioner with copy of dis-agreement note. Then vide order dated 27.2.1997 two annual increments of the petitioner with future effect were stopped and also order was made for effecting recovery of Rs.30831.98. Petitioner filed departmental appeal against the aforesaid orders, which was dismissed.

In this writ petition, both the orders i.e. punishment and appeal have been challenged.

From punishment order Annexure P-7, it would appear that show cause notice proposing punishment of stoppage of two annual increments with future effect and recovery of Rs.30831.98, was issued. The Engineer-in-Chief had asked the Chief Engineer to give personal hearing to the petitioner which was given by the Chief Engineer. Then the Engineer-in-Chief had taken into account the comments received from the Haryana Tourism Corporation and

then had inflicted the punishment.

It is admitted position that the Punishing Authority of the JE i.e. the petitioner was earlier Chief Engineer when Department of PWD, B&R was headed by Chief Engineer. Then post of Engineer-in-Chief was created and thereafter many Chief Engineers are working under the Engineer-in-Chief.

On behalf of the petitioner reliance has been placed on a judgment of this Court reported as State of Punjab and another Vs. Kuldip Singh Bains 2000(3) Labour & Services Judicial Reports 599 that there was non compliance of procedure in this case.

The personal hearing, if any, was to be given by the Punishing Authority but in this case, it was given by Chief Engineer i.e. subordinate to the Engineer-in-Chief. There is no note of the Chief Engineer on record about observations or recommendations after personal hearing. As such there was non compliance of procedure and violation of natural justice.

Here is a case where enquiry officer had found the charges not proved and then Engineer-in-Chief while passing order of punishment had taken into consideration the comments of the Haryana Tourism Corporation. It nowhere shows that copies of those comments had ever been supplied to the petitioner so that he could come to know as to what the Tourism Corporation had written against him and could meet the observation made in those comments. In this connection counsel for the petitioner had relied on judgment of this Court in C.W.P. No. 11697 of 1992 (Gurmel Singh Vs. The State of Punjab and another) decided on 28th August, 1998.

Under these circumstances, this petition is allowed. Impugned

order of punishment dated 27.2.1997 (Annexure P-7) and order dismissing departmental appeal dated 12.2.2001 ( Annexure P-9) are set aside.

**(M.M.Aggarwal)**
**Judge**

**March 16, 2007**
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